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# HOUSE BILL No. 1498

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-29.

**Synopsis:** Tax credit for new employee wages. Provides a state tax credit for wages paid to a new employee employed after December 31, 2005.

**Effective:** January 1, 2006.

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January 18, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1498

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2006]:

4 **Chapter 29. New Employee Tax Credit**

5 **Sec. 1. As used in this chapter, "affiliated group" means a group**  
6 **of two (2) or more corporations or pass through entities, such that**  
7 **for each corporation or pass through entity in the group one (1) of**  
8 **the following is satisfied:**

9 (1) **The corporation or pass through entity owns at least fifty**  
10 **percent (50%) of the voting stock of a corporation in the**  
11 **group.**

12 (2) **The corporation or pass through entity owns an interest in**  
13 **at least fifty percent (50%) of the profits, capital, or value of**  
14 **a pass through entity in the group.**

15 (3) **At least fifty percent (50%) of the voting stock of the**  
16 **corporation is owned by a corporation or pass through entity**  
17 **in the group.**



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(4) An interest in at least fifty percent (50%) of the profits, capital, or value of the pass through entity is owned by a corporation or pass through entity in the group.

Sec. 2. As used in this chapter, "component member of an affiliated group" means a corporation or pass through entity that satisfies one (1) or more of the conditions for inclusion in the affiliated group.

Sec. 3. As used in this chapter, "excluded employee" means any of the following:

(1) An employee of a taxpayer who performs a job that was previously performed by another employee in Indiana, if that job existed for at least six (6) months before hiring the new employee unless a new employee performs a job that was previously performed by an employee who:

- (A) was promoted by the taxpayer to another job; and
- (B) qualified as a new employee before the promotion.

(2) An employee of a taxpayer:

- (A) who was previously employed in Indiana by a related member of the taxpayer; and
- (B) whose employment was transferred to the taxpayer after January 1, 2006.

(3) A child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who:

- (A) is an employee of a taxpayer; and
- (B) has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer.

(4) An employee who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of a taxpayer, as determined under the rules of the department.

An ownership interest shall be determined under this section in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section. However, with respect to a pass through entity, in applying Section 1563 of the Internal Revenue Code, the term "interest in the profits, capital or value" shall be substituted for the term "stock".

Sec. 4. As used in this chapter, "full-time employee" means an individual who:

- (1) is employed for at least thirty-five (35) hours each week;
- or

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(2) renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 5. As used in this chapter, "new employee" means a full-time employee who:

(1) is first employed by a taxpayer in Indiana after December 31, 2005; and

(2) is not an excluded employee.

Sec. 6. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) limited liability company; or

(4) limited liability corporation.

Sec. 7. As used in this chapter, "person" means an individual, an estate, a corporation, a pass through entity, or other entity that may sue and be sued.

Sec. 8. As used in this chapter, "related member" means a person that, with respect to a taxpayer during all or part of the taxable year, is one (1) of the following:

(1) An individual or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual, if the individual and the member of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer.

(2) A stockholder or a stockholder's pass through entity, estate, trust, or corporation if the stockholder and the stockholder's pass through entity, estate, trust, or corporation own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer.

(3) A corporation or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code if the taxpayer owns directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock.

(4) A component member (as defined in Section 1563(b) of the Internal Revenue Code).

(5) A person to or from whom there is an attribution of stock ownership in accordance with Section 1563(e) of the Internal

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Revenue Code except, for purposes of determining whether a person is a related member under this subdivision, twenty percent (20%) shall be substituted for five percent (5%) wherever five percent (5%) appears in Section 1563(e) of the Internal Revenue Code.

(6) A pass through entity that would qualify as a related party under subdivision (2) if the pass through entity were treated as a shareholder and an interest in the profits, capital, or value of the pass through entity is treated as stock.

(7) A pass through entity that would qualify as a related party under subdivision (3), (4), or (5) if the pass through entity were treated as a corporation and an interest in the profits, capital, or value of the pass through entity is treated as stock.

Sec. 9. As used in this chapter, "state tax liability" means tax liability that is incurred under any combination of:

- (1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- (2) IC 27-1-18-2 (insurance premiums tax); and
- (3) IC 6-5.5 (financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 10. As used in this chapter, "taxpayer" means an individual or other entity that:

- (1) has any state tax liability; or
- (2) is a pass through entity.

Sec. 11. A taxpayer is entitled to a credit against any state tax liability that may be imposed on the taxpayer for a taxable year.

Sec. 12. (a) This section applies to a taxpayer that is:

- (1) not a component member of an affiliated group; or
- (2) a component member of an affiliated group that has not entered into an agreement to allocate the affiliated group's aggregate credit among its component members.

(b) The amount of the credit is equal to the result calculated in STEP SEVEN of the following STEPS:

STEP ONE: Determine the compensation paid in the taxable year to individuals who qualify as new employees of the taxpayer.

STEP TWO: Subtract from the STEP ONE result that portion of the STEP ONE amount used to compute a deduction or credit under IC 6-3-3-10 or IC 6-3.1-13.

STEP THREE: The minimum percentage determined by this STEP is five percent (5%). However, if a taxpayer adds fifty

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(50) or more new employees in the taxable year, add to the minimum percentage a bonus percentage for the following taxable years, as applicable:

(A) For the taxable year 2006, one percent (1%).

(B) For the taxable year 2007, three-quarters percent (0.75%).

(C) For the taxable year 2008, one-half percent (0.5%).

(D) For the taxable year 2009, one-quarter percent (0.25%).

**STEP FOUR:** Multiply the STEP TWO result by the STEP THREE result.

**STEP FIVE:** Determine the amount on which the taxpayer's state tax liability is based.

**STEP SIX:** Multiply the STEP FIVE result by one-half percent (0.5%).

**STEP SEVEN:** Determine the lesser of the STEP FOUR result or the STEP SIX result.

**Sec. 13. (a)** This section applies to a taxpayer that is:

(1) a component member of an affiliated group; and

(2) a party to an agreement to allocate the affiliated group's aggregate credit among its component members.

(b) The component members of an affiliated group may enter into an agreement to allocate the aggregate credit computed in this section among the component members of the affiliated group.

(c) The amount of the aggregate credit is equal to the result calculated in STEP SEVEN of the following STEPS:

**STEP ONE:** Determine the compensation paid in the taxable year to individuals who qualify as new employees of the component members of the affiliated group.

**STEP TWO:** Subtract from the STEP ONE result that portion of the STEP ONE amount used to compute a deduction or credit under IC 6-3-3-10 or IC 6-3.1-13.

**STEP THREE:** The minimum percentage determined by this STEP is five percent (5%). However, if an affiliated group adds fifty (50) or more new employees in the taxable year, add to the minimum percentage a bonus percentage for the following taxable years, as applicable:

(A) For the taxable year 2006, one percent (1%).

(B) For the taxable year 2007, three-quarters percent (0.75%).

(C) For the taxable year 2008, one-half percent (0.5%).

(D) For the taxable year 2009, one-quarter percent

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(0.25%).

**STEP FOUR: Multiply the STEP TWO result by the STEP THREE result.**

**STEP FIVE: Determine the amount on which the aggregate state tax liability of the component members of the affiliated group is based.**

**STEP SIX: Multiply the STEP FIVE result by one-half percent (0.5%).**

**STEP SEVEN: Determine the lesser of the STEP FOUR result or the STEP SIX result.**

**(d) The amount of the credit allocated to each component member of an affiliated group is the member's respective share of the aggregate credit computed in this section, according to the agreement referred to in subsection (b).**

**Sec. 14. A credit granted under this chapter may not be carried forward or carried back.**

**Sec. 15. To claim a credit under this chapter, a taxpayer must provide the information concerning new employees and their compensation that is required by the department.**

**Sec. 16. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to the:**

**(1) tax credit determined for the pass through entity for the taxable year; multiplied by**

**(2) percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.**

**Sec. 17. If a taxpayer is an entity not organized under Indiana law, in computing the taxpayer's state tax liability the credit allowed under this chapter shall be treated as a tax paid to Indiana.**

**SECTION 2. [EFFECTIVE JANUARY 1, 2006] (a) The definitions in IC 6-3.1-29, as added by this act, apply throughout this SECTION.**

**(b) IC 6-3.1-29, as added by this act, applies only to amounts paid for compensation to new employees employed in a taxable year beginning after December 31, 2005.**

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